

**UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

\_\_\_\_\_  
BRIAN WOLOSHIN, individually  
and on behalf of all others  
similarly situated,

Plaintiff,

vs.

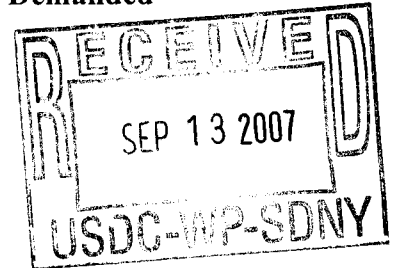
AETNA LIFE INSURANCE  
COMPANY,

Defendant.  
\_\_\_\_\_

Civil Action No. 07 CV 6664

**AMENDED CLASS ACTION  
COMPLAINT**

**Jury Trial Demanded**



**INTRODUCTION**

1. This action is brought pursuant to Section 502 of the Employee Retirement Income Security Act ("ERISA") (29 U.S.C. § 1132).

2. Plaintiff brings this Action both individually, and as a class action against Aetna Life Insurance Company ("Aetna" or "Defendant"), on behalf of himself and all New York insureds: (i) who are beneficiaries under long term disability policies issued by Aetna that are governed by ERISA; and (ii) who were denied benefits pursuant to the Pre-existing Condition Clause (as defined herein) during the period July 24, 2001 through the date on which Defendant's wrongful conduct ceases, inclusive (the "Class" and the "Class Period," respectively).

3. Plaintiff alleges that certain provisions of Defendant's long term disability Policies (as defined herein) violate New York Insurance Law § 3234 (a)(2) [a statutory provision that limits claim denials due to pre-existing conditions]. Accordingly, Plaintiff asks the Court to declare that

these provisions directly violate New York Insurance Law § 3234 (a)(2) and strike these provisions as illegal and unenforceable.

4. The allegations set forth in this Complaint are based on actual knowledge as to Plaintiff's own actions, and on information and belief as to all other allegations, which information and belief is based on the investigation conducted by and through Plaintiff's counsel.

### **JURISDICTION AND VENUE**

5. This Court has subject matter jurisdiction over this action pursuant to 28 U.S.C. § 1331 and specifically, ERISA § 502(e)(1) [29 U.S.C. § 1132(e)(1)].

6. Venue is properly laid in this district pursuant to ERISA § 502(e)(2) [29 U.S.C. § 1132(e)(2)] because Defendant is subject to personal jurisdiction in this judicial district and/or maintains contacts in this judicial district sufficient to subject it to personal jurisdiction.

### **PARTIES**

#### **Plaintiff**

7. Plaintiff Brian Woloshin ("Plaintiff" or "Woloshin") is a resident of the County of Suffolk and a citizen of the State of New York.

8. On or about October 28, 2004, Defendant Aetna Life Insurance Company issued a group long-term disability income policy bearing Policy No. GP-701176-A with an effective date of July 1, 2004 to Woloshin's employer, Memec, LLC (the "Policy"). A copy of the Policy is annexed hereto as Exhibit A.

9. The Policy was issued for the benefit of certain eligible employees of Memec, LLC in exchange for payment of premiums by or on behalf of such eligible employees.

10. Woloshin was an employee of Memec, LLC and eligible for disability benefits under the Policy.

11. The Policy states that, inter alia, disability insurance payments would be made to Woloshin in the event he became disabled due to injury or sickness. Ex. A at 3. The amount of benefits he could receive was based upon a percentage of his basic monthly earnings, if applicable, up to a maximum benefit of \$15,000 per month, less other income benefits, if applicable. Ex. A at 3.

12. During a period within which Plaintiff was an eligible employee, he became disabled within the meaning and pursuant to the terms of the Policy.

13. Plaintiff complied with all relevant terms and conditions of the Policy.

14. Plaintiff filed a claim, co-operated with Defendant, provided proper proof of loss, and otherwise complied with the Policy terms and conditions regarding the filing of the claim for disability benefits.

15. Plaintiff submitted his claim for long-term disability benefits on or about March 18, 2005.

16. Defendant, by way of correspondence to Plaintiff on November 4, 2005, notified Plaintiff that Defendant would not make payment of any long-term disability benefits arising under the terms of the Policy based upon Aetna's determination that: (i) Plaintiff was disabled due to a pre-existing condition, as defined in the Policy, and (ii) Plaintiff's disability, which was caused by a pre-existing condition, arose prior to the expiration of the first 12 months of coverage of the Policy.

**Defendant**

17. Defendant Aetna Life Insurance Company is a publicly owned diversified healthcare benefits company.

18. Aetna is a Connecticut corporation with its corporate headquarters in Hartford, Connecticut. Common stock of Aetna is traded on the New York Stock Exchange under the stock symbol AET.

19. Group long-term and short-term income protection products are sold by Aetna to employers for the benefit of employees. Group long-term income protection provides employees with insurance coverage for loss in the event of extended work absences due to sickness or injury. The benefits are limited to specified maximums as a percentage of income.

### **SUBSTANTIVE ALLEGATIONS**

20. Upon information and belief, the administration of claims and decisions regarding disability benefits under the Policies was implemented, coordinated, designed and/or instituted by Aetna.

#### **Long-Term Disability Policy Provisions**

21. The Policy is an employee welfare benefit plan within the meaning of ERISA §§ 3(3) and 3(2)(A), 29 U.S.C. §§ 1002(3) and 1002(2)(A).

22. Upon information and belief, there are numerous long-term disability benefits policies issued by Aetna that contain the same provisions described in detail below. Such policies are referred to herein as the “Policies.”

23. Pursuant to the terms of the Policies, Plaintiff and members of the Class will receive a “Monthly Benefit for a period of disability caused by disease or injury.” Ex. A at 3.

24. The Policies define a “disability” as the inability to “perform the material duties of your own occupation solely because of: disease or injury and your work earnings are 80% or less of your adjusted predisability earnings.” Id.

25. Furthermore, the Policies state “a period of disability starts on the first day you are disabled as a direct result of a significant change in your physical or mental condition occurring while you are an insured of under this Plan.” Ex. A at 4. Monthly benefits under the Policies “will be payable if a period of disability starts while you are covered and continues during and past the elimination period.” Id.<sup>1</sup>

26. Most significantly, the Policies further state, “[n]o benefit is payable for any disability that is caused by or contributed to by a ‘pre-existing condition’ and starts before the end of the first 12 months following your effective date of coverage” (the “Pre-existing Condition Clause”).

27. According to the Policies, “[a] disease is a pre-existing condition if, during the 3 months before your effective date of coverage: it was diagnosed or treated; or services were received for a diagnosis or treatment of the disease or injury; or you took drugs of medicines prescribed or recommended by a physician for that condition.” Ex. A at 9.

28. As demonstrated herein, the Pre-Existing Condition Clauses violate New York Insurance Law and should be therefore be stricken.

#### **The Pre-Existing Condition Clause Violates New York Insurance Law**

29. During the Class Period, Aetna issued Policies that violate New York Insurance Law.

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<sup>1</sup> The Policy defines the Elimination Period as “the length of time during a period of disability that must pass before benefits start.” Ex. A at 1.

30. Pursuant to New York Insurance Law § 3234(a)(2), “no pre-existing condition provision shall exclude coverage for a period in excess of twelve months following the effective date of coverage for the covered person.”

31. Accordingly, the maximum amount of time that any long-term disability benefits provider, such as Aetna, may withhold payment for long-term disability benefits for those found to be suffering from a pre-existing condition, and whose pre-existing condition arose during the first 12 months following the effective date of their coverage, is 12 months following the effective date of the insurance coverage. According to New York Insurance Law § 3234(a)(2), after the expiration of the first 12 months following the effective date of insurance coverage, the long-term disability benefits provider must commence payment of benefits to such beneficiaries and make payments for as long as they are disabled, subject to the time limits in the Policies.

32. Pursuant to the Pre-Existing Condition Clause inserted into Aetna’s Policies, however, and in contravention of New York Insurance Law § 3234(a)(2), if Aetna determines that: i) a beneficiary under a Policy has a pre-existing condition; and ii) the pre-existing condition arose during the first 12 months following the effective date of coverage, then Aetna will not pay such beneficiary any long-term disability benefits in the future, even after the expiration of the first 12 months following the effective date of coverage.

33. Because the Pre-Existing Condition Clause provides for the total denial of benefits to those beneficiaries suffering from a pre-existing condition that arose during the first 12 months following the effective date of coverage (even after the expiration of the first 12 months following the effective date of coverage), the Pre-Existing Condition Clause violates New York Insurance Law § 3234(a)(2) and must be stricken.

34. On information and belief, Aetna's practice of denying long-term disability benefits, in reliance on the illegal Pre-existing Condition Clause, is a fixed, long-standing policy.

35. Furthermore, on information and belief, Aetna has never paid any disability benefits to those whom Aetna has found to be suffering from a pre-existing condition that arose during the first 12 months following the effective date of coverage.

### **CLASS ACTION ALLEGATIONS**

36. Plaintiff brings this Action pursuant to Rule 23 of the Federal Rules of Civil Procedure on behalf of himself and all insureds: (i) who are beneficiaries under long term disability policies issued by Aetna that are governed by ERISA, and (ii) who were denied benefits pursuant to the Pre-existing Condition Clause during the period July 24, 2001 through the date on which Defendant's wrongful conduct ceases, inclusive.

37. Plaintiff meets the pre-requisites to bring this action on behalf of the Class because:

(a) Numerosity: The Class consists of thousands of individuals and is so numerous that joinder of all members as individual plaintiffs is impracticable.

While the exact number of Class members is unknown and can only be ascertained via discovery, Plaintiff believes that there are thousands of Class members in the State of New York.

(b) Commonality: There are questions of law and fact common to the Class, including:

(i) Whether the Aetna Pre-existing Condition Clauses violate New York Insurance Law § 3234(a)(2);

- (ii) Whether the Aetna Pre-existing Condition Clauses must be stricken as unenforceable.;
- (c) Typicality: Plaintiff's claims are typical of the claims of the Class because Plaintiff and members of the Class each sustained damages arising out of Defendant's wrongful conduct as complained of herein; and
- (d) Adequacy: Plaintiff will fairly and adequately protect the interests of the Class. Plaintiff has no interests that are antagonistic to, or in conflict with, the interests of the Class as a whole, and has engaged competent counsel, highly experienced in class actions, ERISA, and complex litigation, to ensure protection of the interests of the Class as a whole.

38. As an ERISA action, this action is suited for class certification pursuant to Fed. R. Civ. P. 23(b) because: i) the prosecution of separate actions by the members of the Class would create a risk of adjudications with respect to individual members of the Class that would, as a practical matter, be dispositive of the interests of the other members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; ii) the prosecution of separate actions by the members of the Class would create a risk of inconsistent or varying adjudications with respect to the individual members of the Class, which would establish incompatible standards of conduct for Defendant; iii) Defendant, in failing to pay Plaintiff and members of the Class long-term disability benefits after the expiration of the first 12 months following the effective date of coverage, acted or refused to act on grounds generally applicable to the Class, thereby making appropriate final injunctive relief; and iv) questions of law and fact common to members of the Class predominate



over any questions affecting only individual members, and the class action is superior to other available methods for the fair and efficient adjudication of the controversy.

### **COUNT I**

**For Declaratory Judgment Sought Pursuant To ERISA § 502(a)(1)(B), [29 U.S.C. § 1132(a)(1)(B)]  
(On Behalf Of Plaintiff, Individually, and a Class Of All Other Similarly Situated Individuals)**

39. The allegations of paragraphs 1 through 38 are re-alleged and incorporated herein by reference.

40. The Policies are employee welfare benefit plan within the meaning of ERISA §§ 3(3) and 3(2)(A), 29 U.S.C. §§ 1002(3) and 1002(2)(A).

41. The Policies' Pre-existing Condition Clauses state, "[n]o benefit is payable for any disability that is caused by or contributed to by a 'pre-existing condition' and starts before the end of the first 12 months following your effective date of coverage."

42. Pursuant to New York Insurance Law § 3234(a)(2), "no pre-existing condition provision shall exclude coverage for a period in excess of twelve months following the effective date of coverage for the covered person."

43. Accordingly, pursuant to New York Insurance Law § 3234(a)(2), the **maximum** amount of time that any long-term disability benefits provider, such as Aetna, may withhold payment for long-term disability benefits for those found to be suffering from a pre-existing condition, and whose pre-existing condition arose during the first 12 months following the effective date of their coverage, is 12 months following the effective date of the insurance coverage.

44. According to New York Insurance Law § 3234(a)(2), after the expiration of the first 12 months following the effective date of insurance coverage, the long-term disability benefits provider must commence payment of benefits to such beneficiaries and make payments for as long as they are disabled, subject to the time limits in the Policies.

45. During the Class Period, however, in accordance with the Pre-existing Condition Clause, and in direct violation of New York Insurance Law, if Aetna determined that: i) a beneficiary under a Policy had a pre-existing condition; and ii) the pre-existing condition arose during the first 12 months following the effective date of coverage, then Aetna did not pay such beneficiary any long-term disability benefits in the future, even after the expiration of the first 12 months following the effective date of coverage.

46. Because the Pre-Existing Condition Clause provides for the total denial of benefits to those beneficiaries suffering from a pre-existing condition that arose during the first 12 months following the effective date of coverage (even after the expiration of the first 12 months following the effective date of coverage), the Pre-Existing Condition Clause violates New York Insurance Law § 3234(a)(2) and must be stricken.

47. Accordingly, Plaintiff requests a judgment declaring that the Pre-existing Condition Clauses violate New York Insurance Law and requests that the Court strike the Provisions as unenforceable.

48. Plaintiff need not have exhausted his administrative remedies because his claim is a statutory-based legal claim for which exhaustion is not required.

**PRAYER FOR RELIEF**

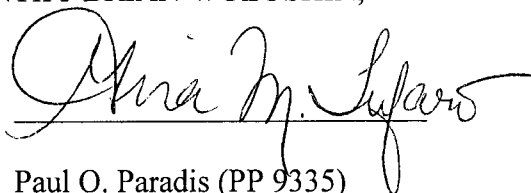
Plaintiff prays that this Court:

- a. Certify this action as a class action under Rule 23;
- b. Award Plaintiff and the Class members a judgment declaring that the Pre-existing Condition Clauses violate New York Insurance Law;
- c. Award Plaintiff and the Class members a judgment striking the Pre-existing Condition Clauses due to their illegality and declaring them unenforceable;
- d. Award to Plaintiff reasonable costs and attorney's fees; and
- e. Grant such other relief as may be just and proper.

Dated: September 13, 2007

PLAINTIFF BRIAN WOLOSHIN,

By:



Paul O. Paradis (PP 9335)

Gina M. Tufaro (GT 5419)

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Attorneys for Plaintiff



# **EXHIBIT A**

# Aetna Life Insurance Company

Hartford, Connecticut 06156

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## Amendment

**Policyholder:** Memec, LLC

**Group Policy No.:** GP-701176-A

**Effective Date:** July 1, 2004

The group policy specified above has been amended. The following summarizes the changes in the group policy, and the Certificate of Insurance describing the policy terms is amended accordingly. This amendment is effective on the date shown above.

This amendment describes changes in the Booklet-Certificate which applies to all covered Employees earning \$60,000 or more per calendar.

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1. Within your Booklet-Certificate under the **Long Term Disability Coverage** section, subsection "Test of Disability" is replaced with the following.

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## Long Term Disability Coverage

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This Plan will pay a Monthly Benefit for a period of disability caused by a disease or injury. There is an elimination period. (This is the length of time during a period of disability that must pass before benefits start.)

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### Test of Disability

You will be deemed to be disabled on any day if:

- you are not able to perform the **material duties** of your **own occupation** solely because of: disease or **injury**; and
- your work earnings are 80% or less of your **adjusted predisability earnings**.

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If your **own occupation** requires a professional or occupational license or certification of any kind, you will not be deemed to be disabled solely because of the loss of that license or certification.

2. The sub-section entitled "A Period of Disability" replaces the subsection by the same name currently appearing in the **Long Term Disability Coverage** section of your Booklet-Certificate.

## A Period of Disability

A period of disability starts on the first day you are disabled as a direct result of a significant change in your physical or mental condition occurring while you are insured under this Plan. You must be under the regular care of a **physician**. (You will not be deemed to be under the regular care of a **physician** more than 31 days before the date he or she has seen and treated you in person for the disease or injury that caused the disability.)

Your period of disability ends on the first to occur of:

- The date Aetna finds you are no longer disabled or the date you fail to furnish proof that you are disabled.
- The date you refuse to be examined by, or cooperate with, an independent **physician** or a licensed or certified health care practitioner, as requested.
- The date you cease to be under the regular care of a **physician**.
- The date an independent medical exam report or functional capacity evaluation fails to confirm your disability.
- The date you reach the end of your Maximum Benefit Duration.
- The date you are not undergoing **effective treatment for alcoholism or drug abuse**, if your disability is caused to any extent by alcoholism or drug abuse.
- The date you refuse to cooperate with or accept:

changes made to a work site or job process to suit your identified medical limitations;  
or

adaptive equipment or devices designed to suit your identified medical limitations;

which would enable you to perform your **own occupation** and provided that a **physician** agrees that such changes or adaptive equipment suit your medical limitations.

- The date you refuse to receive treatment recommended by your attending **physician** that in Aetna's opinion would: cure; correct; or limit your disability.
- The date your condition would permit you to work, or increase the number of hours you work, or the number or type of duties you perform in your **own occupation**, but you refuse to do so.
- The date of your death.
- The day after Aetna determines you are able to participate in an **Approved Rehabilitation Program** and you refuse to do so.

A period of disability will end after 24 months if it is determined that the disability is primarily caused by:

- a Mental Health or Psychiatric condition, including physical manifestations of these conditions, but excluding those conditions with demonstrable, structural brain damage;  
or

- Alcohol and/or Drug Abuse.

There are two exceptions which apply if you are confined as an inpatient in a **hospital or treatment facility** for treatment of that condition at the end of such 24 months.

- If the inpatient confinement lasts less than 30 days, the period of disability will cease when you are no longer confined.
- If the inpatient confinement lasts 30 days or more, the period of disability may continue until 90 days after the date you have not been so continuously confined.

The Separate Periods of Disability section does not apply beyond 24 months to periods of disability which are subject to the above paragraph.

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3. The definition entitled "Reasonable Occupation" currently appearing in the **Glossary** section of your Booklet-Certificate is hereby deleted and does not apply to you.



Ronald A. Williams  
President

Employees earning \$60,000 or more per year

Rider: 18

Issue Date: October 28, 2004

GR-8-CR1

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# Summary of Coverage

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**Employer:** Memec, LLC  
**Group Policy:** GP-701176-A  
**SOC:** 8A  
**Issue Date:** October 28, 2004  
**Effective Date:** July 1, 2004

*Employee:*

The benefits shown in this Summary of Coverage are available for you.

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## Eligibility

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### Employees

You are in an Eligible Class if you are a regular full-time employee of an Employer participating in this Plan.

In addition, to be in an Eligible Class you must be:

- scheduled to work on a regular basis at least 30 hours per week during your Employer's work week; and
- working within the United States.

Your Eligibility Date, if you are then in an Eligible Class, is the Effective Date of this Plan. Otherwise, it is the first day of the calendar month coinciding with or next following the date you commence active service for your Employer or, if later, the date you enter the Eligible Class.

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## Enrollment Procedure

You will be required to enroll in a manner determined by Aetna and your Employer. This will allow your Employer to deduct your contributions from your pay. Be sure to enroll within 31 days of your Eligibility Date.

Your contributions toward the cost of this coverage will be deducted from your pay and are subject to change. The rate of any required contributions will be determined by your Employer. See your Employer for details.

### Long Term Disability

GR-9 0030-0120

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## Effective Date of Coverage

### Employees

Your coverage will take effect on the later to occur of:

- your Eligibility Date; and
- the date your enrollment is received.

If you did not request to be enrolled by your Employer within 31 days of the date you are first eligible for group long term disability coverage sponsored by your Employer, coverage will not take effect until you submit evidence of good health that is both acceptable to Aetna and consistent with your Employer's enrollment guidelines.

*Active Work Rule:* If you happen to be ill or injured and away from work on the date your coverage would take effect, the coverage will not take effect until the date you return to work full-time.

You will be considered to be active at work on any of your Employer's scheduled work days if, on that day, you are performing the regular duties of your job on a full time basis. In addition, you will be considered to be active at work on the following days:

- Any day which is not one of your Employer's scheduled work days if you were active at work on the preceding scheduled work day.
- A normal vacation day.

This rule also applies to an increase in your coverage.

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# Disability Coverage

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## Long Term Disability Benefits

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### Employees

*Elimination Period:* The first 90 days of a period of disability.

Scheduled Monthly LTD Benefit 60% of your monthly predisability earnings.

Maximum Monthly Benefit  
Under this Plan (together with  
all other income benefits)

\$ 15,000

Minimum Monthly Benefit

\$ 100 or 10% of gross monthly benefit  
level, whichever is greater

### Benefits Actually Payable

Any monthly benefit actually payable will be reduced by "other income benefits." In figuring any monthly benefit, other income benefits do not include income from any employer or income from any occupation for compensation or profit. If you work while disabled, any monthly benefit payable is adjusted as described in the following section.

### *Benefit Adjustment While Disabled and Working*

If, while monthly benefits are payable, you have income from:

- any employer; or
- any occupation for compensation or profit;

which is more than 20% of your adjusted predisability earnings; the monthly benefit will be adjusted as follows:

During the first 12 months that you have such income, the monthly benefit will be reduced only to the extent the sum of the amount of that income and the monthly benefit payable, without any reduction for other income benefits, exceeds 100% of your adjusted predisability earnings.

Thereafter, the monthly benefit will be the product of the following:

(A divided by B) x C where:

A = Your adjusted predisability earnings minus such income.

B = Your adjusted predisability earnings.

C = The monthly benefit payable.

Income means income you receive, while disabled and working, from your Employer and from any other employer. However, any income received from another employer will be considered income only to the extent that it exceeds the amount of income you were receiving from such employer immediately before the date a period of disability started.

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**Maximum Benefit Duration\***

Your period of disability will end on the later of:

- The calendar month in which you reach normal retirement age, as determined by the 1983 Amended Social Security Normal Retirement Age; and
- The expiration of the number of months of disability, after the elimination period is met as figured from the following Schedule, if your period of disability starts on or after the date you reach age 62:

**Maximum Benefit Duration Schedule**

Age When Period of Disability Starts	Months of Disability
62 but less than 63	42 months
63 but less than 64	36 months
64 but less than 65	30 months
65 but less than 66	24 months
66 but less than 67	21 months
67 but less than 68	18 months
68 but less than 69	15 months
69 and over	12 months

**1983 Amended Social Security Normal Retirement Age**

Year of Birth	Normal Retirement Age
Before 1938	65
1938	65 and 2 months
1939	65 and 4 months
1940	65 and 6 months
1941	65 and 8 months
1942	65 and 10 months
1943 to 1954	66
1955	66 and 2 months
1956	66 and 4 months
1957	66 and 6 months
1958	66 and 8 months
1959	66 and 10 months
After 1959	67

\* Unless your period of disability ends earlier for one or more of the reasons stated in your Booklet-Certificate.

**Pregnancy Coverage**

Benefits are payable on the same basis as for a disease if a female employee, while covered under this Plan, is absent from active work because of a disabling pregnancy-related condition. A physician's certification that the employee is disabled because of the condition will be necessary. Further, Aetna may request any additional evidence it believes is necessary before deciding that benefits are payable.

If, during the 3 months before coverage took effect, services are rendered or supplies are received in connection with a pregnancy or a pregnancy is confirmed, the pregnancy is a pre-existing condition whether or not the pregnancy commenced during that 3 month period.

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## **Adjustment Rule**

If, for any reason, a person is entitled to a different amount of coverage, coverage will be adjusted as provided elsewhere in the group contract, except that an increase is subject to any Active Work Rule described in Effective Date of Coverage section of this Summary of Coverage.

Benefits for claims incurred after the date the adjustment becomes effective are payable in accordance with the revised plan provisions. In other words, there are no vested rights to benefits based upon provisions of this Plan in effect prior to the date of any adjustment.

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## **General**

This Summary of Coverage replaces any Summary of Coverage previously in effect under the group contract. Requests for amounts of coverage other than those to which you are entitled in accordance with this Summary of Coverage cannot be accepted.

The insurance described in this Booklet-Certificate will be provided under Aetna Life Insurance Company policy form GR-29.

**KEEP THIS SUMMARY OF COVERAGE  
WITH YOUR BOOKLET-CERTIFICATE**

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## **Additional Information Provided by Memec, LLC**

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The following information is provided to you in accordance with the Employee Retirement Income Security Act of 1974 (ERISA). It is not a part of your booklet-certificate. Your Plan Administrator has determined that this information together with the information contained in your booklet-certificate is the Summary Plan Description required by ERISA.

In furnishing this information, Aetna is acting on behalf of your Plan Administrator who remains responsible for complying with the ERISA reporting rules and regulations on a timely and accurate basis.

**Employer Identification Number:**  
33-0823148

**Plan Number:**  
501

**Type of Plan:**  
Welfare

**Type of Administration:**  
Group Insurance Policy with:

Aetna Life Insurance Company  
151 Farmington Avenue  
Hartford, CT 06156

**Plan Administrator:**  
Memec, LLC  
3721 Valley Centre Drive  
San Diego, CA 92130

**Agent For Service of Legal Process:**  
Memec, LLC  
3721 Valley Centre Drive  
San Diego, CA 92130

**End of Plan Year:**  
June 30

**Source of Contributions:**  
Employer and Employee

**Procedure for Amending the Plan:**  
The Employer may amend the Plan from time to time by a written instrument signed by Benefits Manager.

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## Claim Procedures

Your booklet-certificate contains information on reporting claims. Claim forms may be obtained at your place of employment. These forms tell you how and when to file a claim.

**Note:** If applicable state law requires the Plan to take action on a claim or appeal within a shorter timeframe, the shorter period will apply.

### Filing Disability Claims under the Plan

You may file claims for Plan benefits, and appeal adverse claim decisions, either yourself or through an authorized representative.

An "authorized representative" means a person you authorize, in writing, to act on your behalf. The Plan will also recognize a court order giving a person authority to submit claims on your behalf.

You will be notified of an adverse benefit determination not later than 45 days after receipt of the claim. This time period may be extended up to an additional 30 days due to circumstances outside the Plan's control. In that case, you will be notified of the extension before the end of the initial 45 day period. If a decision cannot be made within this 30 day extension period due to circumstances outside the Plan's control, the time period may be extended up to an additional 30 days, in which case you will be notified before the end of the first 30 day extension period. The notice of extension will explain the standards on which entitlement to a benefit are based, the unresolved issues that prevent a decision, and the additional information needed to resolve those issues. You will be given at least 45 days after receiving the notice to furnish that information.

### Filing of an Appeal of an Adverse Benefit Determination for a Disability Claim

You will have 180 days following receipt of an adverse benefit decision to appeal the decision. You will ordinarily be notified of the decision not later than 45 days after the appeal is received. If special circumstances require an extension of time of up to an additional 45 days, you will be notified of such extension during the 45 days following receipt of your request. The notice will indicate the special circumstances requiring an extension and the date by which a decision is expected.

You may submit written comments, documents, records, and other information relating to your claim, whether or not the comments, documents, records, or information were submitted in connection with the initial claim. You may also request that the Plan provide you, free of charge, copies of all documents, records, and other information relevant to the claim.

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## ERISA Rights

As a participant in the group insurance plan you are entitled to certain rights and protections under the Employee Retirement Income Security Act of 1974. ERISA provides that all plan participants shall be entitled to:

### Receive Information about Your Plan and Benefits

Examine, without charge, at the Plan Administrator's office and at other specified locations, such as worksites and union halls, all documents governing the Plan, including insurance contracts, collective bargaining agreements, and a copy of the latest annual report (Form 5500 Series) that is filed by the Plan with the U.S. Department of Labor and available at the Public Disclosure Room of the Employee Benefits Security Administration.

Obtain, upon written request to the Plan Administrator, copies of documents governing the operation of the Plan, including insurance contracts, collective bargaining agreements, and copies of the latest annual report (Form 5500 Series), and an updated Summary Plan Description. The Administrator may make a reasonable charge for the copies.

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Receive a summary of the Plan's annual financial report. The Plan Administrator is required by law to furnish each participant with a copy of this summary annual report.

#### Prudent Actions by Plan Fiduciaries

In addition to creating rights for plan participants, ERISA imposes duties upon the people who are responsible for the operation of the employee benefit plan. The people who operate your Plan, called "fiduciaries" of the Plan, have a duty to do so prudently and in your interest and that of other plan participants and beneficiaries. No one, including your employer, your union, or any other person, may fire you or otherwise discriminate against you in any way to prevent you from obtaining a welfare benefit or exercising your rights under ERISA.

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### **Enforce Your Rights**

If your claim for a welfare benefit is denied or ignored, in whole or in part, you have a right to know why this was done, to obtain documents relating to the decision without charge, and to appeal any denial, all within certain time schedules.

Under ERISA there are steps you can take to enforce the above rights. For instance, if you request materials from the Plan and do not receive them within 30 days you may file suit in a federal court. In such a case, the court may require the Plan Administrator to provide the materials and pay up to \$ 110 a day until you receive the materials, unless the materials were not sent because of reasons beyond the control of the Administrator.

If you have a claim for benefits which is denied or ignored, in whole or in part, you may file suit in a state or federal court.

If it should happen that plan fiduciaries misuse the Plan's money or if you are discriminated against for asserting your rights, you may seek assistance from the U.S. Department of Labor or you may file suit in a federal court. The court will decide who should pay court costs and legal fees. If you are successful, the court may order the person you have sued to pay these costs and fees. If you lose, the court may order you to pay these costs and fees, for example, if it finds your claim is frivolous.

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### **Assistance with Your Questions**

If you have any questions about your Plan, you should contact the Plan Administrator.

If you have any questions about this statement or about your rights under ERISA, you should contact:

- the nearest office of the Employee Benefits Security Administration, U.S. Department of Labor, listed in your telephone directory; or
- the Division of Technical Assistance and Inquiries, Employee Benefits Security Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington D.C. 20210.

You may also obtain certain publications about your rights and responsibilities under ERISA by calling the publications hotline of the Employee Benefits Security Administration.

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# Your Group Coverage Plan

This Plan is underwritten by the Aetna Life Insurance Company, of Hartford, Connecticut (called Aetna). The benefits and main points of the group contract for persons covered under this Plan are set forth in this Booklet. They are effective only while you are covered under the group contract.

If you become covered, this Booklet will become your Certificate of Coverage. It replaces and supersedes all Certificates issued to you by Aetna under the group contract.



President

Group Policy: GP-701176-A  
Cert. Base: 8  
Issue Date: October 28, 2004  
Effective Date: July 1, 2004

# Long Term Disability Coverage

This Plan will pay a Monthly Benefit for a period of disability caused by a disease or injury. There is an elimination period. (This is the length of time during a period of disability that must pass before benefits start.)

## Test of Disability

From the date that you first become disabled and until Monthly Benefits are payable for 24 months, you will be deemed to be disabled on any day if:

- you are not able to perform the **material duties** of your **own occupation** solely because of: disease or injury; and
- your work earnings are 80% or less of your **adjusted predisability earnings**.

After the first 24 months that any Monthly Benefit is payable during a period of disability, you will be deemed to be disabled on any day if you are not able to work at any **reasonable occupation** solely because of:

- disease; or
- injury.

If your **own occupation** requires a professional or occupational license or certification of any kind, you will not be deemed to be disabled solely because of the loss of that license or certification.

## Monthly Benefit

The Scheduled Monthly LTD Benefit, the Maximum Monthly Benefit, and the Minimum Monthly Benefit are shown on the Summary of Coverage.

The monthly benefit is an amount based on your monthly predisability earnings. Other income benefits, as defined later, are taken into account.

- If no other income benefits are payable for a given month:

The monthly benefit payable under this Plan for that month will be the lesser of:

the Scheduled Monthly LTD Benefit; and

the Maximum Monthly Benefit.

- If other income benefits are payable for a given month:

The monthly benefit payable under this Plan for that month will be the lesser of:

the Scheduled Monthly LTD Benefit; and

the Maximum Monthly Benefit;

minus all other income benefits, but not less than the Minimum Monthly Benefit.

**When Benefits Are Payable**

Monthly benefits will be payable if a period of disability:

- starts while you are covered; and
- continues during and past the elimination period.

These benefits are payable after the elimination period ends for as long as the period of disability continues.

**A Period of Disability**

A period of disability starts on the first day you are disabled as a direct result of a significant change in your physical or mental condition occurring while you are insured under this Plan. You must be under the regular care of a **physician**. (You will not be deemed to be under the regular care of a **physician** more than 31 days before the date he or she has seen and treated you in person for the disease or **injury** that caused the disability.)

Your period of disability ends on the first to occur of:

- The date Aetna finds you are no longer disabled or the date you fail to furnish proof that you are disabled.
- The date Aetna finds that you have withheld information which indicates you are performing, or are capable of performing, the duties of a **reasonable occupation**.
- The date you refuse to be examined by, or cooperate with, an independent **physician** or a licensed or certified health care practitioner, as requested.
- The date you cease to be under the regular care of a **physician**.
- The date an independent medical exam report or functional capacity evaluation fails to confirm your disability.
- The date you reach the end of your Maximum Benefit Duration.
- The date you are not undergoing **effective treatment for alcoholism or drug abuse**, if your disability is caused to any extent by alcoholism or drug abuse.
- The date you refuse to cooperate with or accept:

changes made to a work site or job process to suit your identified medical limitations;  
or

adaptive equipment or devices designed to suit your identified medical limitations;

which would enable you to perform your **own occupation** or a **reasonable occupation** (if you are receiving benefits for being unable to work any **reasonable occupation**) and provided that a **physician** agrees that such changes or adaptive equipment suit your medical limitations.

- The date you refuse to receive treatment recommended by your attending **physician** that in Aetna's opinion would: cure; correct; or limit your disability.
- The date your condition would permit you to work, or increase the number of hours you work, or the number or type of duties you perform in your **own occupation**, but you refuse to do so.
- The date of your death.
- The day after Aetna determines you are able to participate in an **Approved Rehabilitation Program** and you refuse to do so.

A period of disability will end after 24 months if it is determined that the disability is primarily caused by:

- a Mental Health or Psychiatric condition, including physical manifestations of these conditions, but excluding those conditions with demonstrable, structural brain damage; or
- Alcohol and/or Drug Abuse.

There are two exceptions which apply if you are confined as an inpatient in a **hospital or treatment facility** for treatment of that condition at the end of such 24 months.

- If the inpatient confinement lasts less than 30 days, the period of disability will cease when you are no longer confined.
- If the inpatient confinement lasts 30 days or more, the period of disability may continue until 90 days after the date you have not been so continuously confined.

The Separate Periods of Disability section does not apply beyond 24 months to periods of disability which are subject to the above paragraph.

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#### **How Separate Periods of Disability Are Treated**

Once a period of disability has ended, any new period of disability will be treated separately.

However, 2 or more separate periods of disability due to the same or related causes will be deemed to be one period of disability and only one elimination period will apply if:

the separation occurs during the elimination period and the periods are separated by less than 15 days in a row of work.

the separation occurs after the elimination period and the periods are separated by less than 6 months in a row of work.

The first period will not be included if it began while you were not covered under this LTD Plan.

If you become eligible for coverage under any other group long term disability benefits plan carried or sponsored by your Employer, this Separate Periods of Disability section will cease to apply to you.

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#### **Other Income Benefits**

They are:

- 50% of any award provided under The Jones Act or The Maritime Doctrine of Maintenance, Wages and Cure.
- Disability, retirement, or unemployment benefits required or provided for under any law of a government. Examples are:

Unemployment compensation benefits.

Temporary or permanent, partial or total disability benefits under any state or federal workers' compensation law or any other like law, which are meant to compensate the worker for any one or more of the following: loss of past and future wages; impaired earning capacity; lessened ability to compete in the open labor market; any degree of permanent impairment; and any degree of loss of bodily function or capacity.

Automobile no-fault wage replacement benefits to the extent required by law.

Statutory disability benefits.

Benefits under the Federal Social Security Act, the Railroad Retirement Act, the Canada Pension Plan, and the Quebec Pension Plan.

Veterans' benefits.

- Statutory disability benefits.

- Disability or unemployment benefits under any plan or arrangement of coverage:

as a result of employment by or association with the Employer; or

as a result of membership in or association with any group, association, union or other organization.

This includes both, plans that are insured and those that are not.

- Unreduced retirement benefits for which you are or may become eligible under a group pension plan at the later of:

age 62, and

the Plan's Normal Retirement Age,

but only to the extent that such benefits were paid for by an employer.

- Voluntarily elected retirement benefits received under any group pension plan; but only to the extent that such benefits were paid for by an employer.
- Disability payments which result from the act or omission of any person whose action caused your disability. These payments may be from insurance or other sources.
- Disability benefits under any group mortgage or group credit disability plan.

Other income benefits include those, due to your disability or retirement, which are payable to: you; your spouse; your children; your dependents.

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**Effect of Increases In Other  
Income Benefits On Monthly  
Benefits**

Increases in the level of other income benefits due to the following will be considered "other income benefits":

- a change in the number of your family members;
- a recomputation or recalculation to correct or adjust your benefit level as first established for the period of disability; or
- a change in the severity of your disability.

There may be cost of living increases in the level of other income benefits received from a governmental source during a period of disability. These increases will not be deemed to be "other income benefits."

There may be cost of living or general increases in the level of other income benefits from a non-governmental source during a period of disability. These increases will not be considered other income benefits to the extent they are based on the annual average increase in the **Consumer Price Index**.

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**Other Income Benefits Which  
Do Not Reduce Monthly  
Benefits**

The amount of any retirement or disability benefits you were receiving from the following sources before the date you become disabled under this LTD Plan will not reduce your monthly benefits:

- military and other government service pensions;
- retirement benefits from a prior employer;
- veterans' benefits for service related disabilities;
- individual disability income policies; and
- Federal Social Security Act.

Also, the amount of any income or other benefits you receive from the following sources will not reduce your monthly benefits:

- profit sharing plans;
- thrift plans;
- 401(k) plans;
- Keogh plans;
- employee stock option plans;
- tax sheltered annuity plans;
- severance pay;
- individual disability income policies; or
- individual retirement accounts (IRAs).

Aetna will determine other income benefits as follows:

**Lump Sum and Periodic Payments From Any Other Income Benefits**

Any lump sum or periodic other income payments that you receive will be prorated on a monthly basis over the period of time for which the payment was made. If a period of time is not indicated, Aetna will prorate the payments over a reasonable period of time, taking into account the expected length of disability benefits and other relevant factors.

That part of the lump sum or periodic payment that is for disability will be counted, even if it is not specifically apportioned or identified as such. If there is no proof acceptable to Aetna as to what that part reasonably is, 50% will be deemed to be for disability.

Any of these "Other Income Payments" that date back to a prior date may be allocated on a retroactive basis.

**Estimated Payments**

The amount of other income benefits for which you appear to be eligible will be estimated, unless you have signed and returned a reimbursement agreement to Aetna. This agreement contains your promise to repay Aetna for any overpayment of benefits made to you.

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If other income benefits are estimated, your monthly benefit will be adjusted when we receive proof:

- of the exact amount awarded; or
- that benefits have been denied after review at the highest administrative level.

Aetna will pay you if any underpayment in your monthly benefit results. You will have to repay Aetna if any overpayment results. When Aetna has to take legal action against you to recover any overpayment, you will also have to pay Aetna's reasonable attorney's fees and court costs, if Aetna prevails.

## Required Proof of Income

Aetna has the right to require proof that:

- you, your spouse, child, or dependent has made application for all other income benefits which you or they are, or may be, eligible to receive relative to your disability and has made a timely appeal of any denial through the highest Administrative level; timely appeal means making such an appeal as required, but in no case later than 60 days from the latest denial;
- the person has furnished proof needed to obtain other income benefits, which includes, but is not limited to, Workers' Compensation Benefits;
- the person has not waived any other income benefits without Aetna's written consent; and
- the person has sent copies of the documents to Aetna showing the effective dates and the amounts of other income benefits.

In addition to the above, for purposes of Federal Social Security, when a timely application for benefits has been made and denied, a request for reconsideration must be made within 60 days after the denial, unless Aetna states, in writing, that it does not require you to do so. Also, if the reconsideration is denied, an application for a hearing before an Administrative Law Judge must be made within 60 days of that denial unless Aetna relieves you of that obligation.

Aetna also requires proof:

- of income you receive from any occupation for compensation or profit; and
- if your income from any such occupation is 80% or less of your **adjusted predisability earnings**, proof that you are unable, due to disease or **injury**, to earn more than 80% of your **adjusted predisability earnings**.

You do not have to apply for:

- retirement benefits paid only on a reduced basis; or
- disability benefits under group life insurance if they would reduce the amount of group life insurance;

but, if you do apply for and receive these benefits, they will be deemed to be other income benefits for which proof is required.

If you do not furnish proof of other income benefits, Aetna reserves the right to suspend or adjust benefits by the estimated amount of such other income benefits.



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**Approved Rehabilitation Program**

Aetna retains the right to evaluate you for participation in an **Approved Rehabilitation Program**.

If, in Aetna's judgment, you are able to participate, Aetna may, in its sole discretion require you to participate in an **Approved Rehabilitation Program**.

This Plan will pay for all services and supplies, approved in advance by Aetna, needed in connection with such participation; except for those for which you can otherwise receive reimbursement from any third party payor, including any governmental benefits to which you may be entitled.

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**Exclusions**

Long Term Disability Coverage does not cover any disability that:

- is due to intentionally self-inflicted **injury** (while sane or insane).
- results from your commission of, or attempting to commit, a criminal act.
- results from driving an automobile while intoxicated. ("Intoxicated" means: the blood alcohol level of the driver of the automobile meets or exceeds the level at which intoxication would be presumed under state law.)
- is due to war or any act of war (declared or not declared).
- is due to: insurrection; rebellion; or taking part in a riot or civil commotion.

On any day during a period of disability that a person is confined in a penal or correctional institution for conviction of a criminal or other public offense:

- the person will not be deemed to be disabled; and
- no benefits will be payable.

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**Pre-existing Conditions**

No benefit is payable for any disability that is caused by or contributed to by a "pre-existing condition" and starts before the end of the first 12 months following your effective date of coverage.

A disease or **injury** is a pre-existing condition if, during the 3 months before your effective date of coverage:

- it was diagnosed or treated; or
- services were received for the diagnosis or treatment of the disease or **injury**; or
- you took drugs or medicines prescribed or recommended by a **physician** for that condition.

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# General Information About Your Coverage

(including information about Termination of Coverage and the Effect of Prior Coverage)

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## Termination of Coverage

Coverage under this Plan terminates at the first to occur of:

- When employment ceases.
- When the group contract terminates as to the coverage.
- When you are no longer in an Eligible Class. (This may apply to all or part of your coverage.)
- When you fail to make any required contribution.

Ceasing active work will be deemed to be cessation of employment. If you are not at work due to one of the following, employment may be deemed to continue up to the limits shown below.

If you are not at work due to disease or **injury**, your employment may be continued until stopped by your Employer, but not beyond 12 months from the start of the absence.

If you are not at work due to temporary lay-off or leave of absence, your employment will be deemed to cease on your last full day of active work before the start of the lay-off or leave of absence.

In figuring when employment will stop for the purposes of termination of any coverage, Aetna will rely upon your Employer to notify Aetna. This can be done by telling Aetna or by stopping premium payments. Your employment may be deemed to continue beyond any limits shown above if Aetna and your Employer so agree in writing.

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## Benefits May Continue After Termination

If your coverage ceases during a period of disability which began while you had coverage, benefits will be available as long as your period of disability continues.

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## Reinstatement of Coverage

If your coverage terminates, you may again become covered in accordance with the terms of this Plan; except that:

- If:
  - you return to active work within 6 months of the date coverage terminated; and
  - you request coverage from your Employer within 31 days of your return to active work;

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any Limitation as to a pre-existing condition will apply only to the extent it would have applied if your coverage had not terminated. Also, any period of continuous service required before your Eligibility Date will apply only to the extent it would have applied if coverage had not terminated.

- If:

you return to active work between the 7th and the 24th month following the date coverage terminated; and

you request coverage from your Employer within 31 days of your return to active work;

any period of continuous service required before your Eligibility Date will apply only to the extent it would have applied if coverage had not terminated.

### How "Prior Coverage" Affects Coverage Under This Plan

If the coverage of any person under this Plan replaces any prior coverage of the person, the following will apply.

"Prior coverage" is any plan of group long term disability coverage that has been replaced by coverage under part or all of this Plan. It must have been sponsored by your Employer who is participating in this Plan. The replacement can be complete or in part for the Eligible Class to which you belong. Any such plan is prior coverage if provided by another group insurance plan.

A person's coverage under this Plan replaces and supersedes any prior coverage. It will be in exchange for everything under such prior coverage except coverage will not be available as to a particular period of disability for which a benefit is available or would be available under the prior coverage in the absence of coverage under this Plan.

As stated earlier, this Plan has a Limitation as to a disability caused by a pre-existing condition.

However, if:

- you had prior coverage on the day before Long Term Disability Coverage took effect; and
- you became covered for this LTD Plan on the date it takes effect;

such Limitation applies only until a continuous period of coverage under the prior coverage and this LTD Plan are equal to the lesser of:

- 12 months; and
- any period of limitation as to a pre-existing condition remaining under the prior coverage.

Where the Limitation no longer applies, the amount of monthly benefit and the maximum period for which benefits will be payable, as to a period of disability caused by such pre-existing condition, will be as provided in this LTD Plan.

In no event will:

- A benefit be payable as to a period of disability caused by a pre-existing condition, if the disability is excluded by any other terms of this LTD Plan.

- A condition be considered to be a pre-existing condition under this LTD Plan if it was not a pre-existing condition under the prior coverage.

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### **Survivor Benefit**

If you die while disabled, a single, lump sum benefit will be paid under this provision if:

- there is an Eligible Survivor as defined below; and
- a Monthly Benefit was payable under this Plan.

The benefit amount will be:

- 6 times the Monthly Benefit, not reduced by other income benefits, for which you were eligible in the full month just before the month in which you die.

If you die before you are eligible for one full Monthly Benefit, however, the benefit will be:

- 6 times the Monthly Benefit, not reduced by other income benefits for which you would have been eligible if you had not died, for the first full month after the month in which you die.

An Eligible Survivor is:

- Your legally married spouse at the date of your death.
- If there is no such spouse, your biological or legally adopted child who, when you die:

is not married; and

is depending mainly on you for support; and

is under age 25. This age limit will not apply if the child is not capable of self-sustaining employment because of mental or physical handicap which existed prior to age 25.

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### **How the Survivor Benefit Will Be Paid**

The benefit will be paid as soon as the necessary written proof of your death and disability status is received.

The benefit will be paid to your eligible surviving spouse, if any. Otherwise, it will be paid in equal shares to your eligible surviving children.

If Monthly Benefit payments are made in amounts greater than the Monthly Benefits that you are entitled to receive, Aetna has the right to first apply the survivor benefit to any such overpayment.

Aetna may pay the benefit to anyone who, in Aetna's opinion, is caring for and supporting the eligible survivor; or, if proper claim is made, Aetna may pay the benefit to an eligible survivor's legally appointed guardian or committee.

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### **Assignment of Insurance**

Coverage may be assigned only with the consent of Aetna.

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**How and When To Report Your Claim**

You are required to submit a claim to Aetna by following the procedure chosen by your Employer. If the procedure requires that claim forms be submitted, they may be obtained at your place of employment or from Aetna. Your claim must give proof of the nature and extent of the loss. Aetna may require copies of documents to support your claim, including data about any other income benefits. You must also provide Aetna with authorizations to allow it to investigate your claim and your eligibility for and the amount of other income benefits.

You must furnish such true and correct information as Aetna may reasonably request.

The deadline for filing a claim for benefits is 90 days after the end of the elimination period. If, through no fault of your own, you are not able to meet the deadline for filing a claim, your claim will be accepted if you file as soon as possible; but not later than 1 year after the deadline unless you are legally incapacitated. Otherwise, late claims will not be covered.

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**How Benefits Will Be Paid**

Benefits will be paid to you at the end of each calendar month during the period for which benefits are payable. Benefits for a period less than a month will be prorated. This will be done on the basis of the ratio, to 30 days, of the days of eligibility for benefits during the month.

Any unpaid balance at the end of Aetna's liability will be paid within 30 days of receipt by Aetna of the due written proof.

Aetna may pay up to \$ 3,000 of any benefit to any of your relatives whom it believes fairly entitled to it. This can be done if the benefit is payable to you and you are a minor or not able to give a valid release. It can also be done if a benefit is payable to your estate.

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**Examinations and Evaluations**

Aetna will have the right and opportunity to examine and evaluate any person who is the basis of any claim at all reasonable times while that claim is pending or payable. This will be done at Aetna's expense.

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**Legal Action**

No legal action may be brought to recover on the group contract within 60 days after written proof of loss has been given as required by the group contract. No such action may be brought after the expiration of the applicable statute of limitations from the time written proof of loss is required to be given.

Aetna will not try to reduce or deny a benefit payment on the grounds that a condition existed before a person's coverage went into effect, if the loss occurs more than 2 years from the date coverage commenced. This will not apply to conditions excluded from coverage on the date of the loss.

### Recovery of Benefits Paid (Subrogation)

As a condition to paying or providing any disability benefits under this Plan, the Plan shall be subrogated to (has the right to pursue) all rights of recovery you have against any third party with respect to such disability, to the extent of benefits provided. The term "third party" includes any party possibly responsible for your injuries or illnesses, or your no-fault automobile insurance coverage.

The following terms and provisions shall apply with regard to the Plan's right of recovery:

- you shall not prejudice the Plan's subrogation rights in any way;
- you shall cooperate fully with the Plan's efforts to recover its benefits paid;
- you shall notify Aetna within 45 days of the date when any notice is given to any other party (including an attorney) of any intention to pursue or investigate a claim to recover damages due to: injuries; or illnesses; that you sustained;
- the Plan's subrogation rights are a first priority claim against all potential liable parties and are to be paid before any other claim for your damages. This applies even if the remainder of the payments from such third party is insufficient to make you whole or compensate you: in part; or in whole for the damages that you sustained.

This provision will apply regardless of whether:

- liability for payment is admitted by the third party; or
- the settlement or judgement you receive identifies the specific benefits this Plan provided.

### Recovery of Overpayments

If payments are made in amounts greater than the benefits that you are entitled to receive, Aetna has the right to do any one or all of the following:

- to require you to return the overpayment on request;
- to stop payment of benefits until the overpayment is recovered;
- to take any legal action needed to recover the overpayment; and
- to place a lien, if not prohibited by law, in the amount of the overpayment on the proceeds of any other income, whether on a periodic or lump sum basis.

If the overpayment:

- occurs as a result of your receipt of other income benefits for the same period for which you have received a benefit under this Plan; and
- to obtain such other income benefits, advocate or legal fees were incurred;

Aetna will exclude from the amount to be recovered, such advocate or legal fees; provided you return the overpayment to Aetna within 30 days of Aetna's written request for the overpayment. If you do not return the overpayment to Aetna within such 30 days, such fees will not be excluded; you will remain liable for repayment of the total overpaid amount.

Examples of other income referred to in the preceding paragraph are:

- Workers' compensation.
- Federal Social Security benefits.
- Disability payments which result from the act or omission of any person whose action caused your disability.

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**Contract Not a Substitute for  
Workers' Compensation  
Insurance**

The group contract is not in lieu of and does not affect workers' compensation benefits. However, any workers' compensation benefits are considered other income benefits.

**General Provisions**

The following additional provisions apply to your coverage.

You cannot receive multiple coverage under this Plan because you are connected with more than one Employer.

In the event of a misstatement of any fact affecting your coverage under this Plan, the true facts will be used to determine the coverage in force.

This document describes the main features of this Plan. Additional provisions are described elsewhere in the group contract. If you have any questions about the terms of this Plan or about the proper payment of benefits, you may obtain more information from your Employer or, if you prefer, from the Home Office of Aetna. Your Employer hopes to continue this Plan indefinitely but, as with all group plans, this Plan may be changed or discontinued with respect to all or any class of employees.

# Glossary

The following definitions of certain words and phrases will help you understand the benefits to which the definitions apply. Some definitions which apply only to a specific benefit appear in the benefit section. If a definition appears in a benefit section and also appears in the Glossary, the definition in the benefit section will apply in lieu of the definition in the Glossary.

## **Adjusted Predisability Earnings**

This is your **predisability earnings** plus any increase made on each January 1, starting on the January 1 following 12 months of a period of disability. The increase on each such January 1 will be by the percentage increase in the **Consumer Price Index**, rounded to the nearest tenth; but not by more than 10%.

## **Approved Rehabilitation Program**

This is a written program approved by Aetna which provides for services and supplies that are intended to enable you to return to work. This program may include, but is not limited to:

- vocational testing;
- vocational training;
- alternative treatment plans such as:
  - support groups;
  - physical therapy;
  - occupational therapy;
  - speech therapy;
- workplace modification to the extent not otherwise provided;
- part time employment; and
- job placement.

A rehabilitation program will cease to be An **Approved Rehabilitation Program** on the date Aetna withdraws, in writing, its approval of the program.

## **Consumer Price Index**

The CPI-W, Consumer Price Index for Urban Wage Earners and Clerical Workers is published by the United States Department of Labor. If the CPI-W is discontinued or changed, Aetna reserves the right to use a comparable index.

## **Effective Treatment of Alcoholism or Drug Abuse**

This means a program of alcoholism or drug abuse therapy that is prescribed and supervised by a **physician** and either:

- has a follow-up therapy program directed by a **physician** on at least a monthly basis; or
- includes meetings at least twice a month with organizations devoted to the treatment of alcoholism or drug abuse.

These are not effective treatment:

- Detoxification. This means solely treating the aftereffects of a specific episode of alcoholism or drug abuse.



- Maintenance care. This means primarily providing an environment free of alcohol or drugs.

### **Hospital**

This is a licensed institution which is accredited by the Joint Commission on the Accreditation of Hospitals, the American Osteopathic Association or the Commission on the Accreditation of Rehabilitative Facilities.

Any such institution which does not provide complete surgical services will also be deemed a hospital if it mainly provides rehabilitative treatment of physical disability.

### **Injury**

An accidental bodily injury.

### **Material Duties**

These are duties that:

- are normally required for the performance of your **own occupation**; and
- cannot be reasonably omitted or modified. However, to be at work in excess of 40 hours per week is not a material duty.

### **Own Occupation**

This is the occupation that you are routinely performing when your period of disability begins. Your occupation will be viewed as it is normally performed in the national economy instead of how it is performed:

- for your specific employer; or
- at your location or work site; and

without regard to your specific reporting relationship.

### **Physician**

"Physician" means a person who is a legally qualified physician. Also, to the extent required by law, a practitioner who performs a service for which coverage is provided when it is performed by a physician.

Regular care of a physician means you are attended by a physician:

- who is not you or related to you;
- who is practicing within the scope of his or her license;
- who has the medical training and clinical expertise suitable to treat your disabling condition;
- who specializes in psychiatry, if your disability is caused, to any extent, by a mental health or psychiatric condition; and
- whose treatment is:

consistent with the diagnosis of the disabling condition; and  
according to guidelines established by medical, research and rehabilitative organizations; and  
administered as often as needed.

### **Predisability Earnings**

#### ***For Non-sales Employees***

This is the amount of salary or wages you were receiving from an employer participating in this Plan on the first day of the month coincident with or preceding the start of a period of disability, calculated on a monthly basis.

It will be figured from the rule below that applies to you.

If you are paid on an annual contract basis, your monthly salary is 1/12th of your annual contract salary.

If you are paid on an hourly basis, the calculation of your monthly wages is based on your hourly pay rate multiplied by the number of hours you are regularly scheduled to work per month; but not more than 173 hours per month.

If you do not have regular work hours, the calculation of your monthly salary or wages is based on the average number of hours you worked per month during the last 12 full calendar months (or during your period of employment if fewer than 12 full months); but not more than 173 hours per month.

Included in salary or wages are contributions you make through a salary reduction agreement with your Employer to any of the following:

An Internal Revenue Code (IRC) Section 125 plan for your fringe benefits.

An IRC 401(k), 403(b), or 457 deferred compensation arrangement.

An executive nonqualified deferred compensation agreement.

Not included in salary or wages are:

- Commissions.
- Awards and bonuses.
- Overtime pay.
- Contributions made by your Employer to any deferred compensation arrangement or pension plan.

A retroactive change in your rate of earnings will not result in a retroactive change in coverage.

#### ***For Sales Employees***

This is one-twelfth of the amount of salary or wages you received from an employer participating in this Plan for the last 12 full calendar months before a period of disability started. If not employed for all of the last 12 full calendar months, it will be the average monthly salary or wages for the months employed.

Included in salary or wages are:

- Awards and bonuses.
- Commissions (including any fixed commissions).
- Contributions you make through a salary reduction agreement with your Employer to any of the following:
  - (a) An Internal Revenue Code (IRC) Section 125 plan for your fringe benefits.
  - (b) An IRC 401(k), 403(b), or 457 deferred compensation arrangement.
  - (c) An executive nonqualified deferred compensation agreement.

Not included in salary or wages are:

- Overtime pay.
- Contributions made by your Employer to any deferred compensation arrangement or pension plan.

A retroactive change in your rate of earnings will not result in a retroactive change in coverage.

### **Reasonable Occupation**

This is any gainful activity for which you are; or may reasonably become; fitted by: education; training; or experience; and which results in; or can be expected to result in; an income of more than 80% of your **adjusted predisability earnings**.

### **Treatment Facility**

This is an institution (or distinct part thereof) that is for the treatment of alcoholism or drug abuse and which meets fully every one of the following tests:

- It is primarily engaged in providing on a full-time inpatient basis, a program for diagnosis, evaluation, and treatment of alcoholism or drug abuse.
- It provides all medical detoxification services on the premises, 24 hours a day.
- It provides all normal infirmity-level medical services required during the treatment period, whether or not related to the alcoholism or drug abuse, on a 24 hour daily basis. Also, it provides, or has an agreement with a **hospital** in the area to provide, any other medical services that may be required during the treatment period.
- On a continuous 24 hour daily basis, it is under the supervision of a staff of **physicians**, and provides skilled nursing services by licensed nursing personnel under the direction of a full-time registered graduate nurse.
- It prepares and maintains a written individual plan of treatment for each patient based on a diagnostic assessment of the patient's medical, psychological and social needs with documentation that the plan is under the supervision of a **physician**.
- It meets any applicable licensing standards established by the jurisdiction in which it is located.

**Confidentiality Notice**

Aetna considers personal information to be confidential and has policies and procedures in place to protect it against unlawful use and disclosure. By "personal information," we mean information that relates to a member's physical or mental health or condition, the provision of health care to the member, or payment for the provision of health care or disability or life benefits to the member. Personal information does not include publicly available information or information that is available or reported in a summarized or aggregate fashion but does not identify the member.

When necessary or appropriate for your care or treatment, the operation of our health, disability or life insurance plans, or other related activities, we use personal information internally, share it with our affiliates, and disclose it to health care providers (doctors, dentists, pharmacies, hospitals and other caregivers), payors (health care provider organizations, employers who sponsor self-funded health plans or who share responsibility for the payment of benefits, and others who may be financially responsible for payment for the services or benefits you receive under your plan), other insurers, third party administrators, vendors, consultants, government authorities, and their respective agents. These parties are required to keep personal information confidential as provided by applicable law.

Some of the ways in which personal information is used include claim payment; utilization review and management; coordination of care and benefits; preventive health, early detection, vocational rehabilitation and disease and case management; quality assessment and improvement activities; auditing and anti-fraud activities; performance measurement and outcomes assessment; health, disability and life claims analysis and reporting; health services, disability and life research; data and information systems management; compliance with legal and regulatory requirements; formulary management; litigation proceedings; transfer of policies or contracts to and from other insurers, HMOs and third party administrators; underwriting activities; and due diligence activities in connection with the purchase or sale of some or all of our business. We consider these activities key for the operation of our health, disability and life plans. To the extent permitted by law, we use and disclose personal information as provided above without member consent. However, we recognize that many members do not want to receive unsolicited marketing materials unrelated to their health, disability and life benefits. We do not disclose personal information for these marketing purposes unless the member consents. We also have policies addressing circumstances in which members are unable to give consent.

To obtain a copy of our Notice of Information Practices, which describes in greater detail our practices concerning use and disclosure of personal information, please call 1-866-825-6944 or visit our Internet site at [www.aetna.com](http://www.aetna.com).

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**Continuation of Coverage  
During an Approved Leave of  
Absence Granted to Comply  
With Federal Law**

This continuation of coverage section applies only for the period of any approved family or medical leave (approved FMLA leave) required by Family and Medical Leave Act of 1993 (FMLA). If your Employer grants you an approved FMLA leave for a period in excess of the period required by FMLA, any continuation of coverage during that excess period will be subject to prior written agreement between Aetna and your Employer.

If your Employer grants you an approved FMLA leave in accordance with FMLA, your Employer may allow you to continue coverage for which you are covered under the group contract on the day before the approved FMLA leave starts.

At the time you request the leave, you must agree to make any contributions required by your Employer to continue coverage. Your Employer must continue to make premium payments.

Coverage will not be continued beyond the first to occur of:

- The date you are required to make any contribution and you fail to do so.
- The date your Employer determines your approved FMLA leave is terminated.
- The date the coverage involved discontinues as to your eligible class.

If you return to work for your Employer following the date your Employer determines the approved FMLA leave is terminated, your coverage under the group contract will be in force as though you had continued in active employment rather than going on an approved FMLA leave provided you make request for such coverage within 31 days of the date your Employer determines the approved FMLA leave to be terminated. If you do not make such request within 31 days, coverage will again be effective under the group contract only if and when Aetna gives its written consent.

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